

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: W. Don Morison, et al.

GAU: 2877

SERIAL NO: 09/987,437

EXAMINER: M. Lyons

FILED: November 14, 2001

FOR: FIBER OPTIC SENSOR WITH FIBER OF ADJUSTABLE OPTICAL PATH LENGTH  
AND METHOD OF USING ITCOMMISSIONER FOR PATENTS  
P.O. BOX 1450  
ALEXANDRIA, VA. 22313-1450

SIR:

Transmitted herewith is an amendment in the above-identified application.

No additional fee is required

This application qualifies for small entity status. 37 C.F.R. §1.27.

Additional documents filed herewith: Traversal of Finality of Office Action

Claims	Claims Remaining	Highest Number Prev. Paid		Number of Extra Claims	Rate	Fee
Total	54	24	-20	0	\$18	\$0.00
Independent	3	3	-3	0	\$86	\$0.00
		<input type="checkbox"/> Multiple Dependent Claims		\$290		\$0.00
				TOTAL OF ABOVE CALCULATIONS		\$0.00
		<input type="checkbox"/> Reduction by 50% for filing by Small Entity				\$0.00
		<input type="checkbox"/> Recordation of Assignment		\$40.00		\$0.00
				TOTAL		\$0.00

A check in the amount of \_\_\_\_\_ is attached.

Please charge any additional Fees for the papers being filed herewith and for which no check is enclosed herewith, or credit any overpayment to deposit Account No. 23-2185. A duplicate copy of this sheet is enclosed.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time may be charged to Deposit Account No. 23-2185. A duplicate copy of this sheet is enclosed.

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PATENT TRADEMARK OFFICE

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AF



**PATENT**  
**ATTORNEY DOCKET NO.: 115354.00107**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of: ) Confirmation No. 6763  
W. Don MORISON et al. )  
Serial No.: 09/987,437 ) Art Unit: 2877  
Filed: November 14, 2001 )  
For: FIBER OPTIC SENSOR WITH FIBER OF )  
ADJUSTABLE OPTICAL PATH LENGTH) )  
AND METHOD OF USING IT )

**TRAVERSAL OF FINALITY OF OFFICE ACTION**

**Mail Stop AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Final Rejection mailed November 6, 2003, has been carefully considered. An Amendment after Final Rejection is filed concurrently herewith. In response to the Final Rejection, the Applicants respectfully submit that the Final Rejection should not have been made final and therefore traverse the finality of the Final Rejection.

Under MPEP §706.07(a), it is inappropriate to make an Office Action final when

the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

In the present application, the Final Rejection introduces a new ground of rejection, namely, the rejection under 35 U.S.C. §103(a) over *Sorin* in view of *Swanson et al*, a reference

newly cited by the Examiner. However, the new ground of rejection is not necessitated by amendment. The limitation added to the independent claims was inherent in originally filed claims 4-7 and 28-31. Thus, the Final Rejection sets forth a new ground of rejection which should have been made against the originally filed claim set and is accordingly a new ground of rejection not necessitated by amendment. As a consequence, the Final Rejection was improperly made final.

Therefore, the Applicants respectfully request that the finality of the outstanding Final Rejection be withdrawn and that the Amendment after Final Rejection filed concurrently herewith be considered and entered as though it had been filed in response to a non-final Office Action.

Respectfully submitted,

W. Don MORISON et al.

By:

  
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**PATENT**  
**ATTORNEY DOCKET NO.: 115354.00107**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of: ) Confirmation No. 6763  
W. Don MORISON et al. )  
Serial No.: 09/987,437 ) Art Unit: 2877  
Filed: November 14, 2001 )  
For: FIBER OPTIC SENSOR WITH FIBER OF )  
ADJUSTABLE OPTICAL PATH LENGTH) )  
AND METHOD OF USING IT )

**AMENDMENT AFTER FINAL REJECTION**

**Mail Stop AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Final Rejection mailed November 6, 2003, has been carefully considered. A Traversal of Finality of Office Action is filed concurrently herewith. Please amend the above-captioned patent application as follows: